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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 530.

LOREN SPECIALTY MFG. CO., INC.,

Petitioner,

v.

THE CLARK MANUFACTURING COMPANY,
ROBERT F. GLEASON and
ARNOLD A. HANSON,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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October 31, 1966.

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NATURE OF CASE.

Petitioner, Loren Specialty Mfg. Co., Inc., asserts a violation by respondents of the Robinson-Patman Act provision which makes it unlawful:

> "to discriminate in price between different purchasers * * *." 15 U. S. C. 13(a).

Both courts below, Judge Decker in the United States District Court in Chicago, 241 F. Supp. 493, and Judges Hastings, Duffy, and Schnackenberg in the Court of Appeals for the Seventh Circuit, 360 F. 2d 913, found against petitioner on the facts.

QUESTION PRESENTED.

The only question this case presents is:

> Whether the two courts below correctly found on the facts that respondents did not "discriminate in price between different purchasers * * *."

The case turns on a question of fact on which the two courts below concurred, correctly, as respondent believes, for reasons that will be apparent from—

THE STATEMENT OF FACTS.

Petitioner, Loren Specialty Mfg. Co., Inc., was for 10 years the exclusive Chicago-area distributor of steam specialties (such as valves, traps and like products) for respondent, The Clark Manufacturing Company. (Finding 1, A. 424.)[1]

During that period the sales of Clark products in the Chicago area *dropped 39%* (A. 328) (while industries in that area requiring such products were expanding vastly). (A. 329.) At the same time, Clark's national sales (outside of Chicago) *increased 19%*. (A. 328; 360 F. 2d at 914.)

Clark concluded it must change its method of distribution in Chicago. (A. 330-331.) It decided it could no longer rely on a single exclusive distributor. It decided to turn to a distribution system utilizing numerous non-exclusive distributors. (A. 331.) Loren was unwilling to organize such a system. (A. 342-344, 357-358.) Clark, therefore, appointed respondent Gleason (succeeded later

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[1] References designated A are to pages of the Appendix lodged in the Court of Appeals and certified here; references to Opinion are to the opinion of the District Court, references to the opinion of the Court of Appeals are to the opinion reported in 360 F. 2d 913.

by respondent Hanson) to operate as a factory representative to set up a series of non-exclusive distributors. (Findings 4-8, A. 425-426, 330-331, 345.) This, it is conceded, Clark had the right to do. (A. 362.)

When the new system was set up, petitioner Loren no longer enjoyed the exclusive distributor discount. (Findings 12-13, A. 427-428; 360 F. 2d at 914.) It agreed, however, to continue as a non-exclusive distributor. (Finding 3, A. 425.) And it received the same discount as every other non-exclusive distributor, and, as both courts below found, no purchaser received a greater discount, or a better price. (Opinion, A. 435, 131-132; 360 F. 2d at 914.)

With its former monopoly position of exclusive distributor gone (A. 269, 296), and its business in Clark products divided with other non-exclusive distributors (A. 190), Loren, dissatisfied, claimed that Gleason (and later Hanson) were purchasers at discriminatory prices—resulting in a violation of the Robinson-Patman Act. (260 F. 2d at 914.)

Both courts below found there was no sale of products to Gleason for resale, or, after him, Hanson. (Findings 9-11, A. 427; Opinion, A. 433; 360 F. 2d at 914.) There was simply a change in the distribution system. Hence, Gleason, and later, Hanson, were not "purchasers" of products. They were factory representatives merely; they bought no products for resale. (Findings 7-11, A. 426-427; Opinion, A. 435; 360 F. 2d at 914.) Accordingly (because there were *no sales to different purchasers at different prices*) there could be no violation of the Robinson-Patman Act.

The District Court found, on the facts:

> "these transactions were not sales of goods * * *." (Opinion, 433.)

The Court of Appeals agreed, and pointed out (as had the District Court) that:

> "No one purchaser was given a lower price." 360 F. 2d at 914.

That is all there is to petitioner's case.

Accordingly,—

NO BASIS FOR REVIEW IS SHOWN.

Petitioner presents no question of law.

The case turns solely on a question of fact. The Court of Appeals correctly summed up the issue in this manner:

> "The district court found that they [Gleason and Hanson] were not purchasers within the provisions of the Act. Under 28 U. S. C. A. rule 52(a), we are prevented from disturbing this finding, even if we believe it erroneous, which we do not. The sanction of 15 U. S. C. A. § 13(a) is directed against discrimination in price *between different purchasers.*" (The emphasis is the court's.) 360 F. 2d at 914.

CONCLUSION.

The writ should be denied.

Respectfully submitted,

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